chattel without intending so to do. And this intention to abandon, shown by evidence, is what is material, and not mere absence of intention to remain in possession. Had the trespasser carried the chattels to some house and left them there, he would clearly not be guilty if he took them away a few days later. The mere fact, then, that the wrongdoer chose as his place of deposit the owner's own premises must be far from conclusive of the latter's possession. Continuity of intention is clearly in such a case continuity of possession. In the absence of evidence of his intention to abandon, Richards, in the present case, should not have been convicted of stealing even if he had postponed for several days the removal of the fruits of his wrong. And had the facts so appeared, an upper court might have had the opportunity of clearing up this curious antinomy in the law of larceny.

GIFTS OF NON-NEGOTIABLE INSTRUMENTS. — Sixty years ago the case of *Edwards* v. *Jones*, 1 Myl. & Cr. 226, decided, in effect, that one who gave to another a non-negotiable instrument, such as a bond, though a power of attorney to the donee were written upon it, had the legal right to release the obligation represented by the instrument, or to revoke the power of attorney, and that that power was necessarily revoked by his death. The question was treated as an equitable one, in some way connected with gratuitous declarations of trust and the various phases of *Ex parte Pye*, 18 Ves. 140. The case has been supposed to represent the English law to-day. It seems, however, that according to the better view the power of attorney granted would enable the donee to sue on the instrument at law in the name of the donor, that, being written on and inseparable from the document, it was really a power incident to the greater thing, — the document, — so a power coupled with an interest, and so irrevocable. It is true the donor might at any time release the obligation and that release would make the power of attorney valueless, not by revoking it but by annihilating it. The act of releasing would be a direct infringement of the legal right of the donee, a tort; a court of equity might well restrain the donor from committing it, or, if he had committed it, might force him to hold the proceeds of his wrong for the donee. This result, so eminently desirable, has almost always been reached in the American cases, — they have considered the transaction as an "equitable assignment" which is in no way revocable. Most inconsistently, the English courts have come to a like conclusion in regard to such a gift if delivered as a *donatio mortis causa*. Ames, cases on Trusts, page 139 note, page 145 note.

The problem has been raised again in England by the recent case *Re Griffin*, 79 L. T. Rep. 442. A testator gave to his son a non-negotiable banker's receipt, — in effect a certificate of deposit, — indorsed "pay to my son" and signed. After his death the son, who was also his executor, received the deposit from the bank on his own account on presentation of the receipt. A bill was then filed against him by those entitled to the property of the testator for the amount of the deposit. According to the doctrine of *Edwards* v. *Jones* the power was revocable, and, as in the case of *Edwards* v. *Jones*, was revoked by the donor's death. After the death, then, the son held a receipt which he could not be compelled to give up but could not sue upon; the estate of the testator still held the obligation from the bank with power to release it, but

without the receipt could not enforce it. The bank might pay either but need pay neither, — a complete deadlock. In the principal case the bank did in fact break that deadlock by paying to the donee, so that even according to *Edwards* v. *Jones* the bill must have been dismissed; but the opinion, by Mr. Justice Byrne, departed radically from the doctrine of that case. He decided that the delivery of the instrument, with the power of attorney upon it, was a final and complete assignment of the obligation because the power of attorney was not in the nature of a power revocable by death, and because, even if that were not sound, the appointment of the donee as executor confirmed the gift. It is difficult to see the *rationale* of the second ground, why what was not a gift should become a gift because of a subsequent irrelevant appointment, but the first ground is clearly inconsistent with *Edwards* v. *Jones*. That case, it is true, is not referred to, but *Fortescue* v. *Barnett* 3 Myl. & K. 36, which it is supposed to have overruled, and *Re Patrick*, [1891] 1 Ch. 82, which seemed willing to differ with it, are vaguely approved. The whole expression of the opinion is tentative, not perhaps always clearly perceived, but it is by far the most satisfactory decision in the English law on the subject.

THE PUBLIC PURPOSES WHICH JUSTIFY TAXATION. — The line between lawful taxation and unconstitutional robbery is not over clear. Whether a collection under guise of a tax is one or the other depends on whether the sum is raised for a public purpose, and what constitutes a public purpose the conflicting authorities make it hard to say. That, in the first instance it is the legislature's duty to judge whether the purpose is public no one doubts. That the courts should overrule this expression of judgment only in cases of clear mistake is equally settled. Where the expenditure will benefit the public directly if at all the taxes are held valid, unless it appears to the courts that the legislature could not reasonably have considered the object public. Where, on the other hand, the immediate effect of the outlay is individual advantage, though great public benefit is sure to result indirectly, the courts are less scrupulous in giving weight to the legislative judgment.

In 1873, the case of *Lowell et al.* v. *Boston*, 111 Mass. 454, held that a tax could not be raised to help the sufferers rebuild after the great fire, though the loans would have resulted in benefit to the whole State. This case is the foundation of a rule which has been laid down by many courts, that, however great the ultimate public good, if the outlay is in the first instance for individual benefit the purpose is not public and will not justify taxation.

A recent decision approving the rule throws light on its character and on the way it is enforced. *Deering & Co.* v. *Peterson*, 77 N. W. Rep. 568, decided by the Minnesota Supreme Court. Here the legislature authorized loans to farmers whose crops had been destroyed by storms, with the purpose of enabling them to buy seed grain for the coming season. A commission was to hear applications and give aid in their discretion, but no one owning more than 160 acres of unincumbered land could have relief. The case might have gone on another ground, but the court held the act unconstitutional, because the purpose was private, and they cite *Lowell* v. *Boston* to sustain this position. In the next breath, however, they say that were the case like *State* v. *Nelson County*, 1 No. Dak. 88, — were the grain loans necessary to keep great numbers of citizens from be-